PUBLIC PROSECUTOR

v.

OON LAI HIN

FEDERAL COURT, KUALA LUMPUR
GEORGE SEAH FJ
MOHD. AZMI FJ
SYED AGIL BARAKBAH FJ
[CRIMINAL APPEAL NO. 29 OF 1984]
17 SEPTEMBER 1984

CRIMINAL PROCEDURE: *Appeal against inadequacy of sentence - Charged for trafficking in 1104 grams of morphine - Sentenced to life imprisonment and fourteen strokes of whipping - Plea of guilty and first offender - Whether valid reasons and exceptional circumstances - Death sentence - Whether only for trafficking in heroin.*

The respondent was charged with two others for trafficking in 1104 grams of morphine. He pleaded guilty to the charge but the 2 co-accused claimed trial. The trial Judge exercising his discretion sentenced him to life imprisonment and fourteen strokes of the rotan. Meanwhile the charge against the 2 co-accused was withdrawn, following which the Court ordered that they be discharged and acquitted.

Appealing against the inadequacy of sentence the Public Prosecutor submitted that the trial Judge should have imposed the death penalty having regard to the large amount of morphine involved.

Held:

[1] As long as the accused person was found guilty of trafficking in dangerous drugs in substantial quantity the death sentence should be passed irrespective of whether it was heroin or morphine.

[2] The factors that the respondent had pleaded guilty to the charge and that he was a first offender are not valid reasons and do not constitute exceptional circumstances for not imposing the death penalty.

[Appeal against inadequacy of sentence allowed. Imprisonment for life and whipping substituted by the sentence of death.]

Cases referred to:

Loh Hock Seng [1980] 2 MLJ 13
Oo Leng Swee [1981] 1 MLJ 247
Chang Liang Sang [1982] 2 MLJ 231
Tan Hock Hai [1983] 1 MLJ 163

Legislation referred to:

Dangerous Drugs Act 1952, ss. 39B(1), (2).
Penal Code, s. 34.

For the public prosecutor - Tee Hong Geok, DPP
For the respondent - W. P. Leong

JUDGMENT

George Seah FJ:

The charge against the respondent, Oon Lai Hin and 2 others reads as follows:

> That you Oon Lai Hin, I/C 2528220, Ooi Eok Chin I/C 4285604 and Chny Bian Neo I/C 2267134 on 30 June 1981 at about 3.20 p.m. at Jalan Duku, Off Jalan Telok Gadong, in the district of Kelang, in the State of Selangor, in furtherance of the common intention of all did traffic in dangerous drugs on your own behalf to wit 1104 grams of Morphine as listed under the 1st Schedule of Dangerous Drugs Act 1952 and you thereby committed an offence under s. 39B(1) of the Dangerous Drugs Act 1952 read together with s. 34 of the Penal Code and punishable under s. 39B(2) of the said Act.

On 10 July 1984 the respondent, Oon Lai Hin pleaded guilty to the charge whereas the other 2 co-accused claimed trial. The learned trial Judge accepted the plea of the respondent and in the exercise of his discretion sentenced him to a term of life imprisonment and fourteen strokes of rotan. After sentence had been passed and learned DPP withdrew the charge against the 2 accused persons and the Court ordered that they be discharged and acquitted.

This is an appeal by the Public Prosecutor against the inadequacy of sentence. It is submitted by the learned DPP that the learned trial Judge should have imposed the death penalty instead of imprisonment for life and fourteen strokes of the rotan.

It is conceded by the learned DPP that this charge was governed by the old law which gave to the Court a discretion either to impose the death penalty or life imprisonment plus whipping. However, it is argued that having regard to the large amount of morphine involved and the trenchant observations of the Federal Court in:

(1) *Loh Hock Seng* [1980] 2 MLJ 13,

(2) *Oo Leng Swee* [1981] 1 MLJ 247,

(3) *Chang Liang Sang* [1982] 2 MLJ 231, and

(4) *Tan Hock Hai* [1983] 1 MLJ 163,

the learned trial Judge should have passed the death penalty.

It seems to us that in adopting the more lenient punishment the learned trial Judge appears to have been influenced by 2 main factors, viz:

(a) that in all the previous appeals when sentence of death was substituted for life imprisonment and whipping by the Federal Court, the dangerous drug involved was heroin and not morphine; and

(b) inordinate delay in bringing the case to trial after the respondent was arrested and charged on 30 June 1981.

In *Chang Liang Sang* case (*supra*) Raja Azlan Shah CJ (Malaya) (as he then was) said:

> Other than in the most exceptional circumstances, a sentence of death should be imposed following a conviction for trafficking, in order to mark the gravity of the offence, to emphasize public disapproval, to serve as a warning to others, to punish the offenders and most of all to protect the public.

It makes no difference, in our opinion, whether it was heroin or morphine, as long as the accused person was found guilty of trafficking in dangerous drugs in substantial quantity, the death sentence should be passed. *A fortiori*, the fact that the respondent had pleaded

guilty to the charge and was a first offender is also not valid reason for not imposing the death penalty if he was convicted of trafficking dangerous drugs in large quantity (see *Oo Leng Swee* (*supra*)). In our judgment, the 2 factors taken by the learned trial Judge do not constitute exceptional circumstances and are therefore irrelevant.

Since the respondent was convicted of trafficking in 1104 grams of morphine, we allow the Public Prosecutor's appeal against sentence. We accordingly set aside the term of imprisonment for life and whipping imposed on the respondent and substitute therefor the sentence of death.

Also found at [1984] 2 CLJ 223